

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

S.T.R. No. 110 of 2001
(Old No. 1454/92)

R.B.N. Sugar Mills Ltd.
Lhaksar, Hardwar
Through its Resident Director.....Applicant/revisionist

Versus

1. Sales Tax Tribunal
Dehradun.
 2. Assistant Commissioner (Judicial)
Sales Tax Dehradun region
Dehradun.
 3. Sales Tax Officer
Hardwar
- ...Opposite Party/Respondents

Shri C.K. Sharma, learned counsel for the revisionist.
Shri Pitamber Maulekhi, Additional Advocate General for the
respondents

Hon'ble Prafulla C. Pant, J.

Heard learned counsel for the revisionist and learned
Additional Advocate General.

2. This revision, preferred under Section 11 (1) of U.P. Sales Tax Act, 1948, is directed against the judgment and order dated 11.08.1992, passed by Sales Tax Tribunal, Dehradun in Second Appeal No. 98 of 1991. The revision was filed way back in the year 1992 and is received by transfer from Allahabad High Court under Section 35 of U.P. Reorganisation Act, 2000.

3. The question of law involved in this revision is as under:-

Whether in the facts and circumstances of the case, the Sales Tax Tribunal has erred in law in holding that there

Was sale of gunny bags on the part of the dealer, which were used for packing of the sugar?

4. The dealer is a manufacturer of sugar, which was an item exempted under Section 4 of U.P. Sales Tax Act, 1948, for the assessment year 1984-85 and 1985-86

5. Learned counsel for the revisionist argued that there was no sale of gunny bags to the purchaser. What is sold is sugar. In this connection, it is submitted that sugar cannot be sold by the manufacturer as a loose item. This Court is in agreement with the submission of the learned counsel for the revisionist that an item cannot be said to have been sold unless price is charged there for. Manufacturers of sugar always sell the sugar in gunny bags and not as a loose item. It is also a matter of common knowledge that the manufacturer of sugar stores sugar in the gunny bags before an item (sugar) is sold. There is nothing on the record to establish that there was any direct agreement between the dealer and the purchaser of sugar regarding sale of gunny bags for any specific amount as consideration. Since there is no evidence on record to show that any separate or specific amount as price was charged from the purchaser in respect of the gunny bags in which the sugar is sold as such, it cannot be said that there is sale of gunny bags by the dealer to the purchaser. Unless the price is charged for gunny bags, merely for the reason that an item is sold in it does not amount to sale of the gunny bags. As such, sale of sugar in gunny bags in such circumstances cannot be said to be sale of gunny bags, which may attract definition of "sale" under Section 2(h) of U.P. Sales Tax Act, 1948.

6. For the reasons as discussed above, the question of law is answered in favour of the revisionist and the revision is allowed. Impugned judgments and orders passed by the tribunal and the authorities below it, are set aside.

(Prafulla C. Pant, J.)

Dt: 21st March, 2006

Sweta